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REMARKS

Responsive to the outstanding Final Office Action, reconsideration is respectfully requested in view of the following arguments:

Claim Rejections – 35 USC §112

Regarding the rejection of claim 10, the objectionable language has been removed to clarify the claim, since it is not needed to distinguish over the cited art. Reconsideration is respectfully requested.

Claim Rejections – 35 USC §102

Claims 1, 10, 18-20 and 26 were rejected as anticipated by the Hubacher et al reference of record. It is noted that in order to establish *prima facie* that a claim is anticipated, each and every feature of the claim must be shown in the reference. The CAFC has stated that "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." (Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)). In the present instance, certain claim features cannot be found in the cited reference. Consider claim 1 which is repeated below for reference.

	CLAIM 1	REMARKS
1.	On a client device capable of operating using a plurality of operating systems on which a plurality of applications run, a method of downloading an operating system and an application which runs on the operating system, comprising:	No disclosure in Hubacher of download of an application that runs on the operating system.
2.	a boot code of the client device providing a menu of selections representing a plurality of available applications including said application;	Hubacher fails to disclose a menu of applications. While a menu is disclosed, the only logical conclusion is that the menu contains a list of operating systems, not applications. See, e.g., col. 3, lines 2-5, and col. 8, lines 40-65 (especially lines 63-65), and col. 9, lines 23-33. The Office Action

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		indicates that such disclosure is present at col. 2, lines 49-55 — no such disclosure exists at this location or throughout the reference.
3.	receiving a signal representing a user's selection of a desired application;	As per 2. above, Hubacher receives a menu selection of a desired operating system, not "a desired application" as required by the claim. (col. 3, lines 3-5 as pointed out in the Office Action do not disclose selecting an application)
4.	responsive to receiving the signal, the boot code activating a download manager of the client device; the download manager managing a download of the operating system associated with the desired application and the desired application in a manner transparent to the user with no input from the user, further comprising:	No teaching in Hubacher of an association of the operating system with the desired application, and no suggestion of such since Hubacher requires that the operating system be directly selected.
5.	connecting to a service provider;	Service provider must be read upon the server to apply.
6.	downloading the operating system associated with the desired application from the service provider;	Again, no association of an application and an operating system. (col. 8, lines 60-65 only discloses download of an OS. it is silent on any association with an application)
7.	downloading the desired application; and	Again, no discussion of download of an application associated with the operating system (col. 10, line 60 through col. 11, line 5 has no disclosure of an application download — it only discloses download of a menu controller program which runs without benefit of an operating system - see col 8, lines 42-43, RIPLMENU is disclosed as a boot block — col. 2, lines 52-63 clearly indicates that RIPLMENU operates prior to installation of an OS)
8.	installing and executing the operating system and the desired application.	Again, no discussion of download of an application

Thus, Hubacher et al. falls short at practically every claim feature of anticipation of the claim. Now consider claim 10:

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	CLAIM 10	REMARKS
9.	A Set Top Box, comprising in combination:	No explicit disclosure in Hubacher of a set top box.
10.	a processor capable of running application software under a plurality of operating systems; and program means comprising:	
11.	a boot code displaying an icon representing an application;	As per 2. above, Hubacher receives an explicit menu selection of a desired operating system. Hubacher has no teaching or suggestion of boot code displaying an icon representing an application, Hubacher provides a menu of operating systems.
12.	responsive to the selection of the icon, a download manager initiating a download of an operating system associated with the application;	No teaching in Hubacher of an association of the operating system with the desired application, and no suggestion of such since Hubacher requires that the operating system be directly selected.
13.	the download manager initiating a download of the application software associated with the icon; and	Again, no association of an application and an operating system and no discussion of download of an application (associated with the operating system)
14.	installing and executing the application on the processor using the operating system.	Again, no discussion of download of an application (associated with the operating system) and execution of such using the operating system

Thus, Hubacher et al. again falls short at practically every claim feature of anticipation of the claim.

Now consider claim 18 as amended. This claim has been amended to clarify the nature of the user transparency and to explicitly call for user selection of an application (rather than an OS) as in claims 1 and 10 above.

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	CLAIM 18	REMARKS
15.	A client device capable of running applications under a plurality of operating systems, comprising: a central processor;	
16.	a first memory storing boot code for booting the central processor into an operational state which presents a user with a choice of application programs that operate under a plurality of associated operational environments;	Hubacher fails to disclose a menu of application programs. See 2 above.
17.	a modem, which downloads under control of a download manager of the client device from a remote server an operating system associated with a selection by the user of one of said application programs, wherein the operating system being downloaded is transparent to the user since the user selected an application rather than an operating system; and	As per 2. above, Hubacher receives a menu selection of a desired operating system, not "a desired application" as required by the claim.
18.	wherein the first memory, upon completion of the download, configures the client device to run the selected application under the operating system.	Hubacher is silent on downloading and configuring an application to run under the downloaded operating system.

Thus, Hubacher et al., falls short of anticipation of amended claim 18.

Now consider claim 26. This claim has also been amended to clarify the nature of the user transparency and to call for user selection of an application (rather than an OS) as in claims 1, 10 and 18 above. In the interest of brevity, it is believed that detailed analysis as with claims 1, 10 and 18 above is unnecessary. With these amendments, it is believed clear that claim 26 is not anticipated by Hubacher et al.

In view of the above, it is believed clear that claims 1 and 10 are not anticipated by Hubacher et al. Accordingly, the anticipation rejections of claims 1 and 10 are improper and should be removed. Reconsideration and allowance are respectfully requested.

Claims 18 and 26 have been amended in a manner that incorporates claim attributes similar to those of claims 1 and 10. Accordingly, it is believed appropriate

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to enter such amendments and allow claims 18 and 26 as well. Reconsideration and allowance are respectfully requested.

Claim Rejections – 35 USC §103

MPEP 2143.03 requires that "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)."

Each of the obviousness rejections presented in the current Office Action depend upon the Hubacher et al. reference. In each case, Hubacher et al. are used erroneous in the same manner as in the anticipation rejections. In view of the above distinctions noted in connection with the independent claims, it is believed unnecessary to individually address the shortcomings in the obviousness rejections of the dependent claims. Failure to address each point found in the Office Action should not be interpreted as accession to the Examiner's position. However, in view of the clear deficiencies noted in the Hubacher reference, individual discussion of each point is believed unnecessary. Reconsideration and allowance of all claims is respectfully requested at an early date.

Entry of the Present Amendment

While the present application is under Final Rejection, it is submitted that the Final Rejection is improper and entry of the amendments is appropriate. Claim 1, is unamended in this response and it has been shown that the current rejection is flawed. Accordingly, claim 1 is improperly rejected and is believed allowable. Entry of amendment to claim 10 simplifies the issues for appeal and corrects the indefiniteness problem noted by the Examiner. Claim 10, however, is similarly improperly rejected and is believed allowable as amended. Claims 18 and 26, while significantly amended from their original form, are essentially brought into conformity with features of claims 1 and 10 which should have already been considered and searched
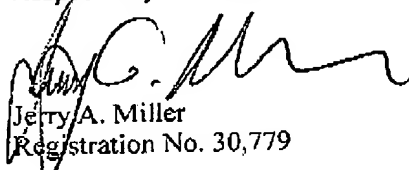
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by the Examiner. Accordingly, entry and consideration of these amendments should not require additional search and consideration. Thus, it is believed appropriate to enter the present Amendment After Final Rejection and allow all claims.

If the Examiner believes that there are any issues which have not been resolved, or if there are any questions about this filing, a telephone call to the undersigned is respectfully solicited.

With this amendment, the application is believed to be in condition for allowance and a favorable response at an early date is earnestly solicited.

Respectfully submitted,

Jerry A. Miller
Registration No. 30,779

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Please Send Correspondence to:
Miller Patent Services
2500 Dockery Lane
Raleigh, NC 27606
Phone: (919) 816-9981
Fax: (919) 816-9982
Customer Number 24337

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